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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE B.N.MALLIKARJUNA

WRIT PETITION NO.1822/1997.

BETWEEN:

Doddabyalakhana Graha Nirmana
Sahakari Sangha Ltd.,
No.94, II Cross,
Surveyor Street,
Gandhi Bazaar, Bangalore-4,
represented by its Secretary. .. PETITIONER

(By Sri.S.R.Hegde Hudlamane, Adv.)

AND:

The Registrar of Co-operative
Societies, in Karnataka,
Aliaskar Road,
Bangalore-1. .. RESPONDENT

(By Sri.M.Y.Karigannavar, HCGP)

This Writ Petition is filed under
Articles 226 and 227 of the Constitution of
India praying to quash vide Ann.J dated
2.1.1997, etc.

This Writ Petition coming on for
hearing this day, the Court made the
following:-

O R D E R

Society called "Doddabyalakhana Gruha
Nirmana Sahakari Sangha Limited" is the
petitioner. Petitioner has sought for

quashing the order dated 2.1.1997 of the respondent-the Registrar of Co-operative Societies in Karnataka made in exercise of the powers under Section 12(6) of the Karnataka Co-operative Societies Act 1959 (hereinafter referred to as 'Act 1959'). Annexure-J is the said order.

2. Briefly stated the facts are:-

It would appear that in the year 1964 a group of people formed a Co-operative society, called Scheduled Caste (Harijan) House Building Co-operative Society Limited with the object of providing house facilities to its members. Accordingly, moved the authority and the society came to be registered in accordance with the provisions of the Act 1959. Things as it stood, it is stated that in about the year 1991, the society in the General Body Meeting held on 24.11.1991 adopted a resolution to amend the byelaw so as to change the name of the society. The proposed change was to call the society as "Doddabylakhana Gruha Nirmana Sahakara Sangha Limited". It appears the

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decision to change was taken in view of the fact that it had lost the original Bye-law and in view of certain other changes. However while changing the name, it is stated the whole of the Bye-law was amended. Annexure-'F' is the copy of the resolution. It reads thus:

“ಬೈಲಾ ತಿದ್ದುಪಡಿಯನ್ನು ಎನ್.ಎಸ್.ಎಂ. ರವರ ಅನುಮೋದನೆಯಿಂದ ಸಂಘದ ಹಾಲಿ ಇರುವ ನೋಂದಣಿಯಾದ ಒಪ್ಪನೆಯವುಗಳ ಮೂಲ ಪ್ರತಿಯು ಕಳೆದು ಹೋಗಿದ್ದು, ಮೂಲ ಪ್ರತಿಯು ಪ್ರಮಾಣ ಪ್ರತಿಯನ್ನು ನೀಡುವಂತೆ ಇಲಾಖೆಯ ಅಧಿಕಾರಿಯೊಂದಿಗೆ ವ್ಯವಹರಿಸಿದಾಗ ಇಲಾಖಾ ಕಛೇರಿಯಲ್ಲಿಯೂ ಸಂಘದ ಒಪ್ಪನೆಯವುಗಳ ಮೂಲ ಪ್ರತಿ ಲಭ್ಯವಿಲ್ಲವೆಂದು ತಿಳಿದು ಬಂದಿದೆ. ಆದ್ದರಿಂದ ಸಂಘದಲ್ಲಿ ನೋಂದಣಿಯಾದ ಒಪ್ಪನೆಯವುಗಳ ಮೂಲ ಪ್ರತಿಯನ್ನು ಇರುವುದು ಅವಶ್ಯಕವಾಗಿದ್ದು, ಈ ಸಮಗ್ರ ತಿದ್ದುಪಡಿಗೆ ಮೂಲಕಾರಣವಾಗಿದೆ. ಅಲ್ಲದೆ ಹಾಲಿ ಜಾಲಿಯಲ್ಲಿರುವ ಒಪ್ಪನೆಯವುಗಳು ಬಹಳ ವರ್ಷಗಳ ಹಿಂದೆ ಅಂದರೆ 1964ರಲ್ಲಿ ರಚಿತವಾಗಿದ್ದು ಅವುಗಳಿಗೆ ಈಗಿನ ಅವಶ್ಯಕತೆಗಳಿಗೆ ಹಾಗೂ ಕಾನೂನುಗಳಿಗೆ ಅನುಗುಣವಾಗಿರುವುದಿಲ್ಲ. ಅಲ್ಲದೆ ಕರ್ನಾಟಕ ಸಹಕಾರ ಸಂಘಗಳ ಅಧಿನಿಯಮ ಮತ್ತು ನಿಯಮಗಳಿಗೆ ಬಹಳಷ್ಟು ತಿದ್ದುಪಡಿಗಳಾಗಿದ್ದು, ಸದರಿ ತಿದ್ದುಪಡಿಗಳಿಗೆ ಅನುಗುಣವಾಗಿ ಅಧಿನಿಯಮಗಳನ್ನು ರಚಿಸುವುದರ ಅವಶ್ಯಕವಾಗಿರುತ್ತದೆ. ಈ ಮೇಲೆ ಹೇಳಿದ ಎಲ್ಲಾ ಕಾರಣಗಳಿಂದ ಪ್ರಸ್ತುತ ಸಮಗ್ರ ತಿದ್ದುಪಡಿಯನ್ನು ತರಲಾಗಿರುತ್ತದೆ. ಈ ವಿಚಾರವನ್ನು ವಿಶೇಷ ಸರ್ವಸದಸ್ಯ ಸಭೆಯಲ್ಲಿ ಅಮೂಲಾಗ್ರವಾಗಿ ಪರಿಶೀಲಿಸಿ ಸಭೆಯು ಸರ್ವಾನುಮತದಿಂದ ಒಪ್ಪಿ ಇದರ ಪ್ರತಿಯನ್ನು ಸಹಕಾರಿ ಇಲಾಖೆಗೆ ಕಳುಹಿಸಿ ಒಪ್ಪಿಗೆಯನ್ನು ಪಡೆಯಲು ಸಭೆಯು ಸರ್ವಾನುಮತದಿಂದ ತೀರ್ಮಾನಿಸಲಾಯಿತು; ಹಾಗೂ ಸಂಘದ ಹಾಲಿ ಜಾಲಿಯಲ್ಲಿರುವ ಒಪ್ಪನೆಯವುಗಳ ಕಾಫಿ ರೀತ್ಯಾ ಒಪ್ಪನೆಯು 1, ಇದರಂತೆ ಸಂಘದ ಹಾಲಿ ಹೆ ಸರು ಷುಲ್ಕಗಳ ಕ್ಯಾಷ್ (ಹರಿಜನ್) ಗೃಹ ನಿರ್ಮಾಣ ಸಹಕಾರ ಸಂಘ, ನಿಯಮಿತ, ಬೊಡ್ಡೆ ಬೈಲಾನ್ ಎಂಬುದಾಗಿದ್ದು ಹಾಲಿ ಸಂಘದಲ್ಲಿ ಸುಮಾರು 80 ಪ್ರತಿ ಸದಸ್ಯರು ಇತರೆ ವರ್ಗ ಮತ್ತು ಜಾತಿಯವರು ಇರುವ ಕಾರಣ ಸಂಘದ ಹೆಸರಿನು ಬೊಡ್ಡೆ ಬೈಲಾನ್ ಗೃಹ ನಿರ್ಮಾಣ ಸಹಕಾರ ಸಂಘ ನಿಯಮಿತ, ಬೆಂಗಳೂರು ಎಂದು ಬದಲಿಸಲು ಸರ್ವಾನುಮತದಿಂದ ಒಪ್ಪಿಗೆ ನೀಡಲಾಯಿತು.”

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Then the society moved the authority and the Assistant Registrar of Co-operative Society, IIInd Circle, Bangalore, considered the application, approved the resolution and issued certificate dated 26.12.1991 as required under Section 12 of the Act. Annexure-G is the said certificate. It would appear that the society acquired certain land measuring 4 acres 23 guntas in Sy.No.32 of Marenahalli village for the purpose of converting it into house sites and allot amongst its members. The records reveal that the disputes amongst the members has arisen only thereafter and certain petitions are also made to the authorities. The respondent who considered those representations decided to direct the society to amend the byelaw and to restore the name of the society as it stood before and further decided to restrict the membership to the people belonging only to Scheduled Caste. Accordingly, on 6.3/4.96 issued notice to the society as required under Section 12(5) of the Act. The petitioner appeared in response to the said notice, filed his objections. The respondent after considering those objections, by the

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impugned order dated 2.1.1997 rejected the objections and directed the society to record the amendments as indicated above. It is this direction under Section 12(6) that is under challenge in this writ petition.

3. It is also necessary to note that during the pendency of this petition, certain individuals and the society styled in its original name have filed applications I.A.I, III & IV under Order I Rule 10 r/w Sec.151 CPC with a request to bring them on record and permit them to participate in the proceedings.

4. One M.Puttaswamy and four others filed I.A.I contending interalia that they are the members of the society and there is need to bring them on record for the proper disposal of the writ petition. This M.Puttaswamy and several others claiming to be the members of the above said society filed Writ Petitions 27741 to 27777/93 seeking certain reliefs. These writ petitions came to be disposed of on 23.11.1994 holding it as premature. However,

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there is a direction in the writ petition that those persons could approach the authority and seek for impleading in the dispute that was already pending enquiry under Section 70 of the Act. After the disposal of these petitions on 23.11.1994, the same M.Puttaswamy and 29 others filed Writ Petitions 21753 to 21782/1995. These writ petitions came to be allowed on 21.1.1995 by a learned Single Judge. Certain directions were given in those writ petitions to the B.D.A. to consider the release of certain sites and also to consider whether those sites could be allotted only to the members belonging to Scheduled Caste. Aggrieved by the said order, the society filed Writ Appeals in W.A.Nos.4240 to 4269/1995. Those appeals came to be allowed on 5.11.1997. The order of the learned Single Judge dated 21.1.1995 is set aside. Further the Division Bench ^{observed &} ~~held~~ that if only the order in the earlier writ petitions dated 23.11.1994 had been brought to the notice of the learned single Judge who disposed of the writ petitions on 21.1.1995, he would not have allowed the writ petitions.

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4. One Sri.A.Nagalingam and 17 others filed I.A.III with a similar request to bring them on record. It is contended by them amongst other things that they are SC persons and their presence in the disposal of the writ petition is necessary.

5. On 25.8.1997, I.A.IV is filed under Section 151 CPC seeking same relief in the name of the society as it stood before the amendment in the year 1991, i.e. Scheduled Caste (Harijan) House Building Co-operative Society Limited. It is represented by its President M.Prabhuswamy.

6. Heard the arguments of the learned counsel for the petitioner, interveners and also the learned High Court Government Pleader.

7. It would be necessary to dispose of I.As.I, III and IV before considering the writ petition on merits. An application under Order I Rule 10 of the Code of Civil Procedure can only be considered and allowed

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if the court is of the opinion that the presence of the interveners is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the matter. In the instant case, a close look at all the applications I.As.I, III and IV demonstrate that the grievance of the interveners is that they are the members of the society. The writ petition is one by the society challenging the direction of the respondent under Section 12(6) of the Act 1959. The Registrar in issuing the notice under Section 12(6) has not recognized the society called by the name and style "Scheduled Caste (Harijan) House Building Co-operative Society Limited" and it is only the writ petitioner who has appeared in response to the notice and has filed objections. The objections are considered and thereafter the impugned order is made.

The principal question that is involved in this writ petition is not as to whether the interveners or anybody for that matter are members of the society or not, the

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point for consideration would be whether the proposed amendment directed to be registered is necessary and desirable in the interest of the society. In the circumstances and as the society in its original name is not represented before the Registrar, I am of the considered view that the presence of none of the interveners is necessary for resolving the controversy in the writ petition. The applications I:As.I, III and IV are accordingly rejected.

8. Before advertng to the merits in the writ petition, it would be convenient to refer to Section 12 of the Co-operative Societies Act 1959. It reads thus:-

"12. Amendment of bye-laws of a co-operative society -

(1) No amendment of any bye-law of a co-operative society shall be valid unless such amendment has been registered under this Act.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment-

(i) is not contrary to the provisions of this Act and the rules;

(ii) does not conflict with co-operative principles;

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(iii) satisfies the requirements of sound business;

(iv) will promote the economic interest of the members of the society; and

(v) is not inconsistent with the principles of social justice; he may register the amendment.

(3) The Registrar shall forward to the society a copy of the registered amendment together with a certificate signed by him, and such certificate shall be conclusive evidence that the amendment has been duly registered.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a co-operative society, he shall communicate the order of refusal together with the reasons therefor, to the society.

(5) If it appears to the Registrar that any amendment of the bye-laws of a co-operative society is necessary or desirable in the interest of such society, the Registrar may, by order, call upon the co-operative society, to make the amendment proposed by him in such manner as may be prescribed and within such time as he may specify.

(6) If such amendment is not made by the co-operative society within the time specified in the said order, notwithstanding anything contained in the Act, the Registrar may, after giving the co-operative society an opportunity of being heard, register the said amendment and forward a copy thereof to the co-operative society along with a certificate signed by him which shall be conclusive evidence that the amendment has been duly registered."

A plain reading of sub-section (5) of Section 12 makes it clear that if the Registrar after considering the material before him is of the

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opinion that amendment of byelaw is necessary or desirable in the interest of society, he may call upon the Co-operative society to make the amendment proposed by him in such manner as may be prescribed and within such time as he may specify. Further sub-section (6) empowers the Registrar to register the said proposed amendment in the event of the co-operative society not carrying it out within the time specified, but such direction can only be given after providing an opportunity of hearing to the co-operative society.

9. Therefore, the point for determination in this proceeding would be whether the Registrar in issuing notice Annexure-G under Section 12(5) applied its mind to ascertain whether the proposed amendment is necessary or desirable in the interest of society.

10. The original byelaw that was registered when the society was incorporated in the year 1964, is not available. The writ petitioner has produced an extract of the said

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original byelaw marked Annexure-A and later with an application the copy of the alleged original byelaw. They do not read similar as far as byelaw No.5(iii) are concerned though infact both provide for permitting both SC and people of other communities to be the members of the society. Order Annexure-J reveals that the original byelaw was not available even when the impugned order came to be made. Though it is admitted that people belonging to SC and other communities were enrolled as members of the society and the number of members belonged to other communities outnumbered the members belonging to Scheduled Caste, original byelaw not being there, it would be rather difficult to say what exactly was the original position. A close look at the order Annexure-J makes it clear that the membership of the society as on 17.9.1992 was 857 and out of it only 184 belonged to SC. The proposed amendment is for restoring the original name of the society and also for restricting the membership only to the persons belonging to Scheduled Caste. The authority, in making the order has taken care and has said that the proposed amendment would not

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affect the rights and privileges enjoyed by the members already there in the society. Furthermore any amendment to the byelaw proposing to curtail or remove the members who are already there is also not valid in law. Therefore, the membership of those who are already there subject of course to the decision in the dispute pending, would not be affected by allowing these amendments. It is stated that a group of people decided to form a society for protecting the interest of the people living in a particular area and therefore, floated the society in 1964 and gradually members belonging to Scheduled Castes and other communities were enrolled and the people belonging to other communities outnumbered the members belonging to Scheduled Caste. It is therefore said that it is necessary and desirable to restrict the membership to the persons belonging to Scheduled Caste.

11. The petitioner's grievance is that the very object of the society, at the first instance being to permit people both belonging to Scheduled Caste and other communities as

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members, the direction requiring the society only to permit the Scheduled Caste people as members is bad and not sustainable. As I have said earlier the extract and the copies of certain byelaws said to be the original byelaw produced by the parties read differently. The relevant byelaw is byelaw No.5(iii). Byelaw No.5(iii) in Annexure-A supposed to be the copy of the original byelaw reads thus:-

"5(iii) All scheduled castes, all communities residing in and around Bangalore are coming within this jurisdiction of this Society."

The copies of the byelaw filed by the applicants (interveners) along with I.A.I and the one produced by the writ petitioner on 15.4.1964 reads similar as regards byelaw 5(iii) and reads thus:-

"5(iii) All scheduled castes and other communities residing in and around Bangalore are coming within this jurisdiction of this Society."

The learned counsel for the petitioner in I.A.III made available another set and according to that set, byelaw 5(iii) reads thus:-

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"5(iii) All Scheduled Castes residing in and around Bangalore are coming within the jurisdiction of this society."

This is supposed to be the original byelaw and the object at the first instance appears to be that the membership should be confined only to the persons belonging to Scheduled Caste and residing in and around Bangalore within the jurisdiction of the society. It would appear there was an enquiry under Section 65 of the Act in the year 1985 much before the dispute started regarding the change of name. The change is in the month of December 1991 and the notice under Section 12(5) is dated 4.3.96. It is not shown that pursuant to the notice any General Meeting of the society was called and convened, there in the said meeting this matter was discussed within the time indicated in the notice Annexure-'H'.

12. The Assistant Registrar who examined all the relevant papers during enquiry under Section 64 of the Act appears to have observed that though the original byelaw was not made available, the copy of the original byelaw deposited in the office of the Registrar revealed that the intention of the

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society was to restrict the membership only to the persons belonging to Scheduled Caste. The extract of the report is seen in the impugned order. It reads that the Assistant Registrar who examined the papers also looked into the copy of the original byelaw that was available in the office of the Registrar of Co-operative Societies and accordingly, byelaw 5(iii) read that the membership should be confined only to the people belonging to Scheduled Caste. Further, the respondent in giving the impugned direction under Section 12(6) has taken into consideration not only the objections filed on behalf of the society but also the report under Section 65 and he is of the opinion that permitting to enrol the members of other communities would definitely dilute the original purpose of the society and it is necessary in the interest of the society to restrict ~~current~~ membership to the persons belonging to Scheduled Caste. It may not be out of place to mention that though the society was registered in the year 1964, nothing serious activities appeared to have taken place till about the year 1984 and only in the year 1984, land measuring 4 acres 23

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guntas was acquired and differences arose only thereafter in the matter of distribution of sites.

13. Certain members appear to have approached the BDA and the BDA has also issued certain directions as to how and to whom those sites to be allotted. I do not wish to elaborate on that point in view of the order in the earlier writ proceedings. However it is clear that even if the sites are formed in the said area, it cannot satisfy the requirement of even a small number of members because the total number of members (existing) is near 800 and the land available is only 4 acres 23 guntas. This one another reason might have perhaps weighed with the authority having regard to the original intention of the society while issuing the direction to restrict ~~future~~ ^{hereinafter} membership ^L to persons belonged to Scheduled caste only. In making the impugned order the authority has also taken care to see that the rights and privileges of the members existed are not adversely affected. Perhaps in making this observation what weighed with the authority is

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the provision contained in Sections 16 and 17 of the Co-operative Societies Act. Further the Registrar in making the impugned direction has taken into consideration the primary object of the society and the fact that the name at the time of registration in the year 1964, stood as 'Scheduled Caste (Harijan) House Building Co-operative Society Limited'. It may also be mentioned that generally and more importantly in the facts and circumstances of this case, change of name makes no difference and does not affect the interest of the society. The name continued to be 'Scheduled Caste (Harijan) House Building Co-operative Society Limited' from 1964 till about 1991 and even then members belonging to other communities were also taken as members and trouble started later. It is these developments that are weighed with the Registrar to issue direction to the society to change the name and restore it as it stood at the time of registration in the year 1964.

14. In these circumstances and as the order/direction has taken care of the rights and privileges of the members, it is rather

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difficult to fault the order of the Registrar made in exercise of the powers under Section 12(6) of the Act and therefore I am of the considered view that this writ petition has no merits and it requires to be dismissed.

15. The learned counsel for the petitioner contended that permitting the direction to continue would violate Article 15(4) of the Constitution of India. I find absolutely no merit in this contention. Any and every individual cannot become a member of any society established under Co-operative Societies Act 1959. A perusal of Section 16 makes it clear that only such persons who are qualified under the provisions of the Act and its byelaw are enrolled as members. Societies are established for promoting the co-operative principles in accordance with the provisions contained in the Act and the byelaws. In these circumstances, restricting membership to a particular group of people living in a particular area by a co-operative society established and functioning under the provisions of the Karnataka Co-operative

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Societies Act, 1959 and the Rules framed thereunder, is not violative of Article 15(4) of the Constitution of India.

16. In the result and for the reasons hereinabove stated, writ petitioner fails and accordingly, this writ petition is dismissed. Parties to bear their own costs.

Sd/-
JUDGE



KNM/-